

**Town of Ashburnham
Policy Statement**

Policy Name:	Financial Compliance Policy	Policy Number:	017
Approval Authority:	Town Administrator	Applies to:	Financial Team
Adopted:	Jan 17, 2019	Revised: --	Reviewed: --

1.0 Policy Statement

This policy guides the Town relative to Post Issuance Debt Administration; Compliance with Regulations associated with Tax-Exempt Governmental Purpose Bonds.

2.0 Reason for the Policy

The objective of this policy is to facilitate the proper administration of outstanding bonds and to ensure compliance with federal tax law and regulations pertaining to the use of tax-exempt governmental purpose bonds and to the use of property, projects and equipment funded with tax-exempt governmental purpose bonds, and for filing requirements associated with tax-exempt governmental purpose bonds.

This document is to encompass the following:

- The planning for and payment of debt service on outstanding bonds;
- The use of bond proceeds (and the term “bond”, except as otherwise indicated, includes notes, bonds and tax-exempt lease purchases issued by the Town);
- The use of property, projects, equipment, etc. funded with tax-exempt bond proceeds;
- The timely expenditure of bond proceeds;
- Compliance with arbitrage yield restriction rules and with the calculation and timely payment of arbitrage rebate payments, as required;
- Filing requirements;
- The reserve of funds in anticipation of a rebate payment requirement;
- Collection and retention of necessary documentation; and
- Resolution of problems.

3.0 Scope of Policy

The following sections outline the scope of the policy and procedures for which the Treasurer is responsible.

3.1 Use of bond proceeds and bond funded property

It is the Treasurer’s responsibility to monitor and ensure the proper use of bond

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proceeds and bond funded property.

The proper use of tax-exempt bond proceeds and the proper use of bond-funded property, projects, equipment, etc. (hereafter “property”), will be confirmed and documented through Bond Counsel’s review prior to the issuance of tax-exempt bonds and will be addressed in the legal opinion issued by Bond Counsel and in the Tax Certificate (or Non-Arbitrage Certificate) prepared by Bond Counsel as part of the final bond transcript.

There are further requirements associated with the proper use of bond financed projects and of the use of bond proceeds included in the Massachusetts General Laws and in the regulations imposed by the Department of Revenue regulations. Although these requirements are not part of federal tax law, the requirements do dictate how bond funded property is to be disposed of or how it might be used in a manner other than originally contemplated.

The continued proper use of property funded with tax-exempt bond proceeds will be monitored by the Treasurer through an annual reminder, as required, of such to appropriate Town officials and through the review of any Town proposals considering the change in use of the property or Town procurements relating to such property. The procurement of service contracts, management contracts and leases for the limited use of Town property should also be reviewed by the Treasurer. The Treasurer will be responsible for managing any remedial actions, if required.

3.2 Timely expenditure of bond proceeds –

The Internal Revenue Code (the “Code”) stipulates that issues of bonds and notes where the interest is exempt from federal income taxation are subject to rebate of arbitrage. There are certain exceptions to this requirement. First, issuers of \$5,000,000 or less of tax-exempt securities, including a reasonable expectation of such issues, in a calendar year are exempt from the payment of rebate. Second, issuers of issues where the proceeds are spent at least as rapidly as certain milestones set forth in the Code are exempt.

For small issuers, however, there is only a three-year “temporary period” within which bond or note proceeds must be expended. Proceeds held beyond the third anniversary of issuance must be yield restricted in order to avoid the issue becoming an “arbitrage bond”, at which point the interest could be declared subject to taxation by the Internal Revenue Service.

It is the responsibility of the Treasurer to review the expenditure requirements cited in the Tax Certificate and to monitor the expenditure of bond proceeds until all funds are expended.

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3.3 Arbitrage yield restriction and rebate –

It is the responsibility of the Treasurer to manage yield restricted investments, as required.

It is the responsibility of the Treasurer to determine rebate exposure; to procure arbitrage calculation services; to make rebate payments, as required, to the Federal Treasury; and to prepare 8038-T forms for such purposes. It is also the responsibility of the Treasurer to reserve funds for such rebate payments, as appropriate, and to report the rebate liability to the Town's Independent Financial Auditor.

3.4 Filing requirements –

The proper filings of forms 8038-G and 8038-GC are essential with every tax-exempt financing. All 8038-G's and 8038-GC's are to be signed by the Town Treasurer. No other official in the Town is authorized to execute these forms.

It is the responsibility of the Treasurer to ensure rebate payments, if required, are made on a timely basis. Such payments must be made within 60 days of the maturity of a note; within 60 days of the fifth anniversary, and multiples thereof, of the issue of a bond; and within 60 days of the final maturity of a bond. The payment of a rebate is to be accompanied by and documented on the form 8038-T.

3.5 Appropriation and payment of debt service –

It is the Treasurer's responsibility to ensure the proper amounts of debt service are appropriated each year or are otherwise included as an amount to be raised on the Tax Rate Recapitulation certified by the Department of Revenue.

It is also the Treasurer's responsibility to ensure all debt service payments are paid when due.

3.6 Documentation –

It is the responsibility of the Treasurer to ensure all proper documentation is produced and retained as required. Such documentation will include, but not necessarily be limited to, the following:

- Tax Certificates or Non-Arbitrage Certificates
- Note and Bond transcripts
- Form 8038-G's and 8038-GC's
- Projected expenditure cash flows prepared for each financing prior to issue
- The record of the expenditure of funds

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- The record of the investment earnings on unexpended bond proceeds prior to full expenditure
- Yield restricted investments, as required
- Rebate calculations, rebate payments, and Form 8038-T, as required
- The list of projected tax-exempt financings during each calendar-year
- Management contracts

3.7 If a problem occurs –

It is the responsibility of the Treasurer to address violations associated with any tax-exempt financing when violations are discovered. The violation may be addressed through the Voluntary Compliance Agreement Program (VCAP). Alternatively, remedial action may be required under Section 1.141-12 of the Internal Revenue Service regulations. The Treasurer shall consult with the Town's Bond Counsel and/or Financial Advisor as appropriate.

3.8 Compliance with continuing disclosure filings under S.E.C. Rule 15c2-12 –

Under S.E.C. Rule 15c2-12, the Town is required to periodically provide notices and updates of documents to EMMA, the Electronic Municipal Market Access website managed by the Municipal Securities Rulemaking Board. Compliance is required in accordance with continuing disclosure agreements made by the Town when issuing notes and bonds of the Town.

It is the responsibility of the Treasurer to understand and comply with the continuing disclosure agreements into which the Town has entered.

4.0 Who does this policy apply to?

The Financial Team: Treasurer/Collector, Accountant, Chief Procurement Officer, and the Town Administrator.

5.0 Who is responsible for enforcing this policy?

The Town Treasurer shall be responsible for implementing this policy. The Treasurer will be assisted by:

- The Town Accountant, who is responsible for recording expenditures and interest earnings and for reviewing contracts entered into by the Town;
- The Town Administrator, or a designated subordinate, who has ultimate responsibility for approving contracts entered into by the Town and for the implementation of Town capital projects and disposition of Town property; and

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- The Chief Procurement Officer, if other than the Town Administrator, who has the responsibility for procuring service and management contracts and overseeing the acquisition and disposition of Town property.

It is the Treasurer's responsibility to convey to each party the Treasurer's expectations as to their performance relating to project implementation, project expenditures, documentation, and information required by the Treasurer to remain in compliance with applicable tax law. Since all the responsible parties participate in the issuance of Town bonds, the Treasurer will provide direction to those responsible parties during the process of issuing bonds, at the time of the delivery of bond proceeds, and after the delivery of bond proceeds but prior to the final maturity of the bonds.

6.0 Definitions

NONE

7.0 Policy

7.1 PROCEDURES TO BE FOLLOWED BY THE TREASURER

The following procedures are to be followed by the Treasurer.

7.1.1 Procedures to ensure proper use of tax-exempt funds –

In the process of preparing for a bond or note sale, the Treasurer will be providing information to Bond Counsel pertaining to the proper use of the property being acquired with tax-exempt funds.

Prior to the distribution of the Preliminary Official Statement, the Treasurer shall meet with appropriate Town officials, including the Town Administrator and the Board of Selectmen, if deemed necessary, to review the information provided to Bond Counsel, to review the intended use of the bond proceeds and the property funded and to determine whether there are any contemplated uses of the property that might be inconsistent with the use of tax-exempt funds.

7.1.2 Procedures to ensure compliance with the use and expenditure of note and bond proceeds at the time of sale –

At the time of the sale of notes and bonds, it is assumed that the projected use of proceeds and the use of the property being funded are in compliance with the Federal tax code. It is reasonable to rely on the scrutiny of Bond Counsel and the documentation that accompanies each financing, based on the information provided to Bond Counsel.

With the completion of a financing, the Treasurer is to compile and maintain a separate file associated with the financing. This documentation will typically include the following:

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- The bids results, the final numbers, and the quantitative rationale for the use of credit enhancement.
- The transcript for the financing, which, at minimum, should include the tax certificate (non-arbitrage certificate). The tax certificate should include a description of use of funds, the identification of the expenditure test to which the bonds are subject, and the arbitrage yield.
- The form 8038-G or 8038-GC.
- The projected expenditure cashflow by purpose, as provided to Bond Counsel prior to the issuance of the bonds. The cashflow is to be for each purpose, projecting the expenditure of funds on at least a semi-annual basis, until all funds are expended. If the bonds are subject to certain expenditure thresholds, the cashflow should present the amount of proceeds that should be expended at each threshold. The cashflow should be adjusted to reflect an issue amount that might be in excess of the amount originally included in the cashflow (for example, a large original issue premium).
- Any other notes prepared by the Treasurer, as applicable, relating to the monitoring of the expenditure of funds and use of the property.

As determined necessary, the Treasurer should establish one or more bank accounts for the proceeds of each issue of bonds and notes to allow for the tracking of the expenditure of funds. Such account or accounts should not commingle bond and note proceeds with operating funds, though a single account may serve multiple bond or note issues as long as interest and expenditures can be tracked by issue. It is necessary that the account documentation be able to show every payment made by amount and date and every credit of interest earnings by amount and date. If all the purposes are co-mingled in one account, there should be a separate recording of expenditures and investment earnings by issue by the Town Accountant.

As required under the Massachusetts General Laws, all interest earnings shall be credited and released to the General Fund when earned.

All such account documentation should be maintained for six years after final maturity of bonds.

7.1.3 Procedures to monitor the rate of expenditure of funds –

To monitor the expenditure of bond proceeds, the Treasurer shall perform the following review:

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- At the end of each fiscal year, and within thirty days of the final maturity of any note or bond, the Treasurer shall review the expenditure account and check for compliance with the required expenditure thresholds.
- The Treasurer shall assess the likelihood of continued compliance with the expenditure thresholds, or if a threshold has not been met, assess the likelihood of positive arbitrage.
- If the Treasurer believes the expenditure thresholds have not been met and/or will not be met, and also expects there will be investment earnings in excess of the arbitrage yield, then the Treasurer is to reserve an amount estimated to represent a future rebate payment or, as applicable, to request an appropriation of Town Meeting for the rebate payment.
- The Treasurer is to continue to monitor expenditures at the end of each fiscal year, or at the maturity of an issue, until all funds are expended.
- If after the maturity of a note or bond, the Treasurer determines that a rebate is likely payable to the Federal Treasury, the Treasurer shall procure the services of a firm to calculate the rebate and thereafter make payment in a timely fashion.

Thus, in addition to the documentation compiled at the closing of the bond, the Treasurer shall add the following additional documentation:

- The record documenting expenditures until the next time a review is performed
- As applicable, any rebate calculations performed
- As applicable, any Forms 8038-T prepared

When all the funds are expended, the Treasurer shall accumulate all appropriate documentation and retain it until six years after the final maturity of the financings that funded the property.

7.1.4 Procedures associated with the investment of bond proceeds –

Unless funds are subject to yield restriction, the Treasurer shall be responsible for the investment of bond proceeds as deemed appropriate. If funds are subject to yield restriction, the Treasurer shall invest the funds in a manner consistent with the requirements of yield restriction. If investment contracts are purchased at the time of the delivery of bond proceeds, such contracts shall be procured under the scrutiny of Bond Counsel.

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7.1.5 Procedures associated with procurement of investments associated with a bond issue –

It is the responsibility of the Treasurer to ensure other investments made relating to a bond issue (such as investments purchased to fund an escrow for a current or advance refunding) are procured in accordance with applicable tax regulations.

7.1.6 Procedures to ensure compliance with the use of service contracts and management contracts –

The Chief Procurement Officer shall forward all Requests for Proposals for service and/or management contracts for review by the Treasurer. As deemed necessary, the Treasurer shall provide appropriate direction to the Chief Procurement Officer relating to private activity issues associated with service and management contracts.

As required, the Treasurer shall request advice from the Town's Bond Counsel and/or Financial Advisor.

7.1.7 Procedures to ensure compliance with lease purchases

At the beginning of each fiscal year, the Treasurer shall inform all Town Department Heads and other Town officials that no lease purchase contracts are to be entered into without the approval of the Treasurer. In addition, the Treasurer shall inform them that the forms 8038-G and 8038- GC are only to be signed by the Treasurer.

7.1.8 Procedures to ensure compliance with the change of use of tax-exempt bond funded property

At the beginning of each fiscal year, the Treasurer shall review with the Town Administrator and, as needed, with Town Department Heads the expected proper use of bond funded property and requesting any information as to the possible change in use or disposition of property.

At any time during the fiscal year, if there is a change or use or disposition of property contemplated, the Town Administrator shall inform the Treasurer of the proposal. As needed, the Treasurer shall consult with Bond Counsel and/or the Town's financial advisor relating to such proposal.

In the case where change in use is subject to Town Meeting approval, the Town Administrator shall forward all Town Meeting articles relating to the change in use or sale of Town tax-exempt bond funded property for review by the

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Treasurer. The Treasurer shall provide appropriate direction to the Chief Procurement Officer relating to issues associated with the change in use of tax-exempt bond funded property.

As required, the Treasurer shall request advice from the Town's Bond Counsel and/or Financial Advisor.

7.1.9 Procedures to project calendar year schedule of note and bond issues

At the beginning of each calendar year, the Treasurer, in conjunction with the Town Administrator, shall prepare and/or update a list of all projected tax-exempt financings issued and expected to be issued during the then current calendar year. This record shall document representations made by the Town relating to the small issuer safe harbor status and/or the Bank Qualification of tax-exempt issues of the Town. At the beginning of the following fiscal year, the Treasurer shall review the list of financings and shall revise it accordingly.

7.1.10 Procedures to ensure the proper appropriation and payment of debt service

Prior to the beginning of each fiscal year, the Treasurer is to provide to the Town Administrator and the Town Accountant a list of each debt service payment payable during the fiscal year, including the amount and the payment due date, on all outstanding debt. It is the Town Administrator's responsibility to ensure the Tax Rate Recapitulation for that fiscal year includes all debt service payments identified by the Treasurer.

It is jointly the Treasurer's and the Town Accountant's responsibility to ensure funds are available to make each debt service payment when due.

7.1.11 Procedures to ensure compliance with continuing disclosure filings under S.E.C. Rule 15c2- 12

The Treasurer is to contact the Town's Financial Advisor at the beginning of February each year if the Financial Advisor has not already contacted the Town and commenced the process of preparing the annual filing.

The Treasurer is to be familiarized with the list of significant events in the continuing disclosure agreements, to ensure when such events occur, timely filings are made.

When each respective annual audit is completed, the Treasurer is to forward the audit to the Financial Advisor to be filed on the EMMA (Electronic Municipal Market Access) website, managed by the Municipal Securities Rulemaking Board.

A new Town Treasurer is to review all continuing disclosure agreements as part

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of initial position orientation to ensure future compliance.

8.0 Attachments

8.1 Annual Acceptance by all Officials



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Attachment 8.1: Annual Acceptance by all officials

Fiscal Year: 2019

Annual Acceptance of Town Policy 017-Financial Compliance Policy relative to Post Issuance Debt Administration; Compliance with Regulations associated with Tax-Exempt Governmental Purpose Bonds.

By signing below, we agree that we have reviewed and agree to the provisions within Policy 017, as stated above.

Town Administrator

Date

Treasurer/Collector

Date

Town Accountant

Date

